

Charles E. Lyons II, V-76614  
 C.S.P. Solano (12-229)  
 P.O. Box, 4000  
 Vacaville, Ca. 95696

Petitioner IN PRO SE

FILED

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KATHLEEN W. BICKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 08

3205

CASE No. \_\_\_\_\_

MOTION FOR APPOINTMENT  
 OF COUNSEL FOR FEDERAL  
 HABEAS CORPUS PROCEEDING

CHARLES EDWARD LYONS, II	)
Petitioner,	)
-vs-	)
D.K. SISTO, Warden, a person having custody of petitioner,	)
Respondent.	)

TO THE HONORABLE JUDGES OF THE ABOVE-ENTITLED COURT:

Petitioner hereby moves this court for an order appointing counsel pursuant to 28 U.S.C. § 1915 and 18 U.S.C. 3006a. Petitioner is without funds to hire counsel and without funds to pay cost for investigators.

Petitioner hereby declares that his assets are \$ 0.0, and his income, if any, is \$ 0.0, per month. Petitioner is currently incarcerated California State Prison Solano at Vacaville, California.

Petitioner also requests counsel so that his interests may be protected and be afforded due process of law by the professional assistance due to the complexity of these issues involved. Petitioner avers he has set forth a **Prima Facie** case for relief. Petitioner is a layman of the law.

Petitioner requests counsel in order that counsel may prepare for an evidentiary hearing and/or requests for discovery.

Petitioner declares under penalty of perjury that the foregoing is true and correct. Executed this 20TH day of June, 2008, at California State Prison Solano, at Vacaville, California.

Charles E. Lyons

Charles E. Lyons, II  
Petitioner IN PRO SE

POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR APPOINTMENT OF COUNSEL  
IN FEDERAL HABEAS CORPUS PROCEEDING.

3           Although ordinarily a habeas petitioner has no absolute  
4 right to counsel in a federal habeas proceeding, counsel must  
5 be appointed if (a) an evidentiary hearing is necessary (Rules  
6 Governing Habeas Petitions Number 8, subdivision (c),); (b)  
7 if counsel is necessary for the effective use of discovery  
8 procedures (Rules Governing Habeas Petitions number 6,  
9 subdivisions (a) or (c)); or (c) if required in order to afford  
10 due process under the circumstances of the case. Eskridge  
11 v. Rhay (9th Cir. 1965) 345 F.2d 778, 782. Due process may,  
12 for example, require the appointment of counsel when the issues  
13 are very complex. Dillon v. United States (9th Cir. 1962)  
14 307 F.2d 445.

15       Federal judges and magistrates have the discretionary  
16 power to appoint counsel to represent indigent habeas corpus  
17 petitioners. 28 U.S.C. 1915, subdivision (d), 28 U.S.C. 2254,  
18 subdivision (h), and 28 U.S.C. 3006A. The district court may  
19 appoint counsel in a habeas corpus case to represent an  
20 indigent if it finds "that the interests of justice so  
21 require." 18 U.S.C. 3006A. In deciding whether to appoint  
22 counsel the district court will evaluate the likelihood of  
23 success on the merits as well as the petitioner's ability  
24 to articulate his or her claims pro se in light of the  
25 complexity of the legal issues involved. Weygandt v. Look  
26 (9th Cir. 1983) 718 F.2d 952; Bashor v. Risley (9th Cir. 1984)  
27 730 F.2d 1228, 1234; Fendler v. Goldsmith (9th Cir. 1983)

1 728 F.2d 1181, 1190.

2 A habeas petitioner's inability to investigate crucial  
3 facts (Richardson v. Miller (W.D.Mo. 1989) 721 F.Supp. 1067),  
4 or the case is likely to require the assistance of experts  
5 either in framing or trying the claims (Paradis v. Arave (D.  
6 Idaho 1987) 667 F.Supp. 1361, 1364-1365.)

7 Counsel may be required for preparing for an evidentiary  
8 hearing and or discovery. See Swazo v. Warden (10th Cir. 1994)  
9 23 F.3d 332, 333; Porcaro v. United States (1st Cir. 1987)  
10 832 F.2d 208, 210-211.

11 For the foregoing reasons petitioner should be appointed  
12 counsel.

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